

Remarks

Applicants have canceled claims 15-31 and added substitute claims 32-49 to better define the claimed invention. Applicants respectfully submit that no new prohibited matter has been introduced by this Preliminary Amendment. While written description support for the claims can be found throughout the specification, specific support for these new claims can be found as indicated in the following chart.

Claim	Support in Specification
32	page 11, lines 19-21; original claim 7
33	page 27, lines 11-15
34	page 12, lines 2-4
35	page 11, line 21 to page 12, line 2
36	page 12, lines 10-12; original claim 10
37, 38, 39	page 25, lines 9-13; original claim 14
40, 41, 42	page 12, lines 4-6; page 25, lines 1-8
43, 44, 45	page 33, line 20 to page 34, line 5
46, 47	page 30, lines 8-11
48, 49	page 34, lines 6-7 and 19-20

The Office Action dated March 13, 2001 and the Advisory Office Action dated July 6, 2001 have been carefully reviewed and the forgoing remarks are made in response thereto. The Examiner's courtesy in granting an interview with Applicants' agent on August 8, 2001 and August 15, 2001 is acknowledged with appreciation. Applicants appreciate the Examiner's efforts in furthering the prosecution of this Application. In view of the following remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Summary of the Office Action

1. Claims 15-31 were rejected under 35 U.S.C. 112 (second paragraph) as being incomplete for omitting essential steps.
2. Claims 15-31 were rejected under 35 U.S.C. 112 (first paragraph) as containing subject matter which was not described in such a way as to enable the skilled artisan to make and use the invention.

Rejection based on 35 U.S.C. 112 (second paragraph)

Claims 15-31 were rejected under 35 U.S.C. 112 (second paragraph) purportedly because they omit essential steps such as how the level of chlorotoxin binding is indicative of the presence of cancer and to what extent chlorotoxin binding is indicative of the presence of cancer. Claims 15-31 have been cancelled therefore the rejection is moot. Furthermore, the pending claims have been written as to provide the feature that the presence of binding is indicative of the presence of cancer. Applicants respectfully submit that the new claims simply require that chlorotoxin binding be detected.

Rejection based on 35 U.S.C. 112 (first paragraph)

Claims 15-31 were rejected under 35 U.S.C. 112 (first paragraph) purportedly because they contain subject matter which was not described in such a way as to enable the skilled artisan to make and use the invention. The Office Action purports that only binding to metastatic melanoma cells was disclosed in the specification, and that metastatic and non-metastatic melanoma cells may display different levels of chlorotoxin binding. The Office Action arrives at the conclusion that it would be unclear whether chlorotoxin binding would be higher in non-metastatic melanoma cells than control cells.

Claims 15-31 have been cancelled. New claim 33 is directed, in part, toward detection of melanoma in a patient by adding chlorotoxin and measuring binding. In response to the previous rejection, Applicants submit the attached Declaration under 37 C.F.R. 1.132 of Dr. Matthew Gonda. The Declaration provides further evidence that chlorotoxin binds to both primary and metastatic melanoma, but not to normal skin cells. Applicants respectfully submit that the specification teaches all that is necessary to use chlorotoxin to detect the presence of melanoma, primary or metastatic, in a tissue sample isolated from a patient (see page 28, lines 6-11 and page 37, line 18 through page 38, line 17).

Conclusion

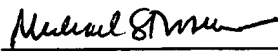
The foregoing remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, he is invited to telephone the undersigned at his convenience.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or

credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **Constructive Petition for Extension of Time** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: **April 15, 2002**
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